

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NATHANIEL JOHNSON, #927305,

Plaintiff,

vs.

CHERYL, *et. al.*,

Defendants.

2:11-cv-00291-JCM-CWH

ORDER

This matter is before the Court on Plaintiff's Third Request for Service of Process (#52), filed September 8, 2011, and Plaintiff's Motion to Extend Time for Service of Process (#55), filed September 28, 2011.

On February 23, 2011, Plaintiff filed an application to proceed *in forma pauperis* and a complaint (#1). On April 22, 2011, the Court entered a screening order granting Plaintiff's request to proceed *in forma pauperis* and allowing the Eighth Amendment medical claim against "Dr. Mondora, nurse Cheryl, HSA Melody, and Lt. Wiseman" to proceed. *See* Order (#18) at 5:25-26. The claims against Naphcare, Inc., Clark County, and Sheriff Doug Gillespie were dismissed. *Id.* at 6:6-18.

In the screening order, the Clerk of Court was ordered to send Plaintiff four USM-285 forms to fill out and return to the United States Marshal's office in order to accomplish service on the remaining defendants. Plaintiff was further instructed to file a notice identifying which defendants were served and which were not served based upon the USM-285 returns provided by the Marshal. On May 12, 2011, the USM-285 returns were filed with service having been accomplished on Defendant Lt. Wiseman.¹ Service was not accomplished on Dr. Mondora, nurse Cheryl, or HSA

¹ Defendant Wiseman filed his answer on May 25, 2011. *See* Answer (#27).

1 Melody.

2 On May 17, 2011, just five days after the USM-285 returns were filed indicating that certain
3 defendants had not been served, Plaintiff filed a motion requesting service on the unserved
4 defendants. *See* Pl.'s Mot. (#26). The Court denied Plaintiff's motion (#26) on the ground that
5 Plaintiff had "failed to identify any provision of law or the federal rules" authorizing service on a
6 defendant through his or her employer. *See* Order (#37) at 1:22-26. The Court granted Plaintiff an
7 additional 120 days to conduct an investigation to determine the identities and addresses of the
8 unserved defendants. *Id.*

9 On July 17, 2011, Plaintiff filed a second motion for service of process (#40) wherein he
10 identified each of the unserved defendants by first and last name as well as their place of work. The
11 Court granted Plaintiff's motion (#40) because it appeared that there was "sufficient identifying
12 information to effect service" on the unserved defendants. The Court ordered the Clerk of Court to
13 send Plaintiff three additional USM-285 forms in order to accomplish the ordered service. On
14 September 8, 2011, the Court granted Plaintiff's motion to amend (#45) thereby adding Deputy Chief
15 Jim Dixon as a party to the case.

16 **1. Plaintiff's Motion for Extension of Time for Service of Process (#55)**

17 By way of this motion, Plaintiff requests an additional 120 days to effectuate service on the
18 unserved defendants. Plaintiff is proceeding in this matter *in forma pauperis* and is entitled to rely
19 upon the United States Marshal for service of the summons and complaint. *See* Fed. R. Civ. P.
20 4(c)(3); *see e.g., Walker v Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) ("an incarcerated pro se
21 plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
22 summons and complaint and ... should not be penalized ... where the U.S. Marshall or the court clerk
23 has failed to perform his duties.") (citation and quotation omitted). The failure to serve a defendant
24 within 120 days after the complaint is filed requires that a court dismiss the action without prejudice
25 against the unserved defendant or require service to be accomplished within a specified time. *See*
26 Fed. R. Civ. P. 4(m). Nevertheless, if the plaintiff shows "good cause for the failure, the court must
27 extend the time for service an appropriate period." *Id.*

28 "Courts have discretion under Rule 4(m) ... to extend the time for service." *In re Sheehan*,

253 F.3d 507, 513 (9th Cir.2001). “Courts must apply considerable leeway when assessing whether a pro se civil rights litigants' failure to comply strictly with time limits ... should be excused for good cause.” *McGuckin v. Smith*, 974 F.2d 1050, 1058 (9th Cir.1992), *rev'd on other grounds* (internal quotation marks omitted). Because litigants proceeding *in forma pauperis* must rely on the Marshal for service, “delays in service attributable to the Marshal automatically constitute ‘good cause’ preventing dismissal under Rule 4(m).” *Graham v. Satkoski*, 51 F.3d 710, 713 (7th Cir.1995); *but see Walker*, 14 F.3d at 1421-22 (where a pro se plaintiff fails to provide the U.S. Marshal with accurate and sufficient information to effect service of the summons and complaint, dismissal is appropriate).

Here, the Court has little difficulty finding that there is good cause for the extension requested. Plaintiff has been diligent in his efforts to effectuate service and the Court has previously found that the information provided to the Marshal’s office in this instance was sufficient to locate the unserved defendants in order to effectuate service. Accordingly, the request for an extension to effectuate service will be granted.

2. Plaintiff’s Third Request for Service of Process (#52)

The Court is concerned that the Marshal’s office was unable to effectuate service based on the information provided by Plaintiff in the most recent USM-285 forms. The USM-285 returns, attached to Plaintiff’s motion (#52), indicate that the Marshal’s office needs a “P #” for the unserved defendants. The Court is unclear why the Marshal’s office needs a “P #”. Whatever the “P #” refers to is irrelevant as the Court has previously determined that the information given is sufficient to identify the unserved defendants in order to serve them at the place where each apparently works – the Clark County Detention Center.

In an attempt to avoid further issues, the United States Marshal shall again attempt service on the unserved defendants based on Plaintiff’s most recent USM-285 forms. The Court further directs the Marshal to serve the custodian of records for NaphCare, Inc. with a subpoena *duces tecum* requiring the disclosure of Dr. Raymond Mondora, Melody Moniora, and Cheryl Galeme’s last known addresses and phone numbers to the Marshal so it may again attempt service on the unserved defendants. Based on the foregoing,

1 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Extend Time for Service of Process
 2 (#55) is **granted**. Pursuant to Rule 4(m), Plaintiff shall have an additional 120 days from the date
 3 of this order to effectuate service of the complaint and summons in this matter.

4 **IT IS FURTHER ORDERED** that Plaintiff's Third Request for Service of Process (#52)
 5 is **granted**. The United States Marshal shall again attempt service on the unserved defendants based
 6 on Plaintiff's most recent USM-285 forms. The United States Marshal shall provide Plaintiff with
 7 a Form USM-285 indicating whether service was effected. Plaintiff shall file the Form USM-285
 8 within ten days after receiving it from the United States Marshal.

9 **IT IS FURTHER ORDERED** that the Clerk of Court shall:

- 10 1. Issue a subpoena *duces tecum* to the Custodian of Records Naphcare, Inc. directing
 11 the Custodian to provide the last known address and telephone number of Dr.
 12 Raymond Mondora, Melody Moniora (Health Services Administrator), and Cheryl
 13 Galeme (charge nurse). The subpoena *duces tecum* directed toward Naphcare, Inc.
 14 shall be served on its registered agent located at Registered Agents Legal Services,
 15 Ltd., 112 N. Curry St., Carson City, Nevada 89703.
- 16 2. The Clerk of Court shall deliver the subpoenas *duces tecum*, the summons,
 17 Complaint, and a copy of this Order to the United States Marshal.
- 18 3. The United States Marshal shall serve the subpoenas *duces tecum* as well as a copy
 19 of this Order on the Custodians of Records for Naphcare, Inc.
- 20 4. The Custodian of Records shall respond to the subpoena *duces tecum* within fourteen
 21 days of receipt. The Custodian shall provide its response to the United States
 22 Marshal and the Marshal shall retain the information under seal.
- 23 5. Within thirty days after receiving information from the Custodian of Records, the
 24 United States Marshal shall, if necessary, use the information provided to attempt to
 25 serve the summons and Complaint on Defendants Dr. Raymond Mondora, Melody
 26 Moniora (Health Services Administrator), and Cheryl Galeme (charge nurse). The
 27 Marshal shall provide Plaintiff with a Form USM-285 (without listing Defendants
 28

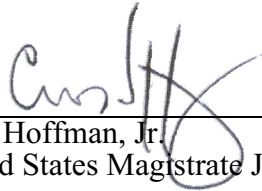
1 contact information) indicating whether service was effected.

2 6. Plaintiff shall file the Form USM-285 within ten days after receiving it from the
3 United States Marshal.

4 **IT IS FURTHER ORDERED** that if the United States Marshal's Service is unable to serve
5 Defendants Dr. Raymond Mondora, Melody Moniora (Health Services Administrator), and Cheryl
6 Galeme (charge nurse), and Plaintiff wishes to have service attempted again, a motion must be filed
7 with the court specifying a more detailed name and/or address for said defendants, or whether some
8 other manner of service, such as service by publication, should be attempted.

9 **IT IS FURTHER ORDERED** that insofar as Defendant Deputy Chief John Dixon was
10 added as a party to this action, the Clerk of the Court shall send Plaintiff a USM-285 form, one copy
11 of the complaint and this order. Plaintiff shall have twenty (20) days in which to furnish to the U.S.
12 Marshal the required Forms USM-285. Within twenty (20) days after receiving from the U.S.
13 Marshal a copy of the Form USM-285 showing whether service has been accomplished, Plaintiff
14 must file a notice with the Court identifying whether Defendant Dixon was served.

15 DATED this 4th day of October, 2011.

16
17 
18 C.W. Hoffman, Jr.
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28